To: Peter D. Keefe(pdk@PatentApplication.com)

U.S. Trademark Application Serial No. 88869174 - SIX FEET APART OR SIX **Subject:**

FEET UNDER

August 28, 2020 11:06:28 AM EDT **Sent:**

tmng.notices@uspto.gov **Sent As:**

Attachments

88834664

88858890

88853518

88851695

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United States Patent and Trademark Office (USPTO) Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 88869174

Mark: SIX FEET APART OR SIX FEET UNDER

Correspondence Address:

PETER D. KEEFE KEEFE AND ASSOCIATES 24405 GRATIOT AVE. EASTPOINTE MI 48021 UNITED STATES

Applicant: Peter D. Keefe

Reference/Docket No. N/A

Correspondence Email Address: pdk@PatentApplication.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within <u>six months</u> of the issue date below or the application will be <u>abandoned</u>. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 28, 2020

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF USPTO DATABASE OF MARKS

The trademark examining attorney searched the USPTO database of registered and pending marks and found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02. However, marks in prior-filed pending applications may present a bar to registration of applicant's mark.

SUMMARY OF ISSUES:

- PRIOR-FILED APPLICATIONS
- SECTIONS 1, 2, AND 45 REFUSAL FAILURE TO FUNCTION
- Advisory Regarding Ornamental Use
- IDENTIFICATION OF GOODS
- MULTIPLE-CLASS APPLICATION REQUIREMENTS

PRIOR-FILED APPLICATIONS

The filing dates of pending U.S. Application Serial Nos. 88858890, 88834664, 88858518, and 88851695 precede applicant's filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §\$1208 *et seg.* Therefore, upon receipt of applicant's

response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced applications.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the marks in the referenced applications. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

SECTIONS 1, 2, AND 45 REFUSAL - FAILURE TO FUNCTION

Registration is refused because the applied-for mark is a slogan or term that does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1053, 1127. In this case, the applied-for mark is a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment. *See In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1160 (TTAB 2019) (holding INVESTING IN AMERICAN JOBS not registrable for retail store services or promoting public awareness of goods made or assembled by American workers because the mark would be perceived merely as a commonly-used informational message); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1460-61 (TTAB 1998) (holding DRIVE SAFELY not registrable for automobiles and automobile parts because the mark would be perceived merely as an "everyday, commonplace safety admonition").

Applicant's mark is SIX FEET APART OR SIX FEET UNDER for "Apparel, including shirts, hats, facial coverings and face masks."

Terms and expressions that merely convey an informational message are not registrable. *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010). Determining whether the term or expression functions as a trademark or service mark depends on how it would be perceived by the relevant public. *In re Wal-Mart Stores, Inc.*, 129 USPQ2d at 1150 (citing *D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1713 (TTAB 2016)); *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229; TMEP §1202.04. "The more commonly a [term or expression] is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark [or service mark]." *In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (quoting *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229); TMEP §1202.04(b).

The attached evidence from FoxIllinois.com, WNewsJ.com, and AtlanticBusinessMagazine.net, among others shows that this term or expression, namely, SIX FEET APART OR SIX FEET UNDER, and equivalent and similar phrases such as 6 FEET AWAY OR 6 FEET UNDER, SIX FEET AWAY OR SIX FEET UNDER, 6 FEET APART OR SIX FEET UNDER, and SIX FEET APART OR SIX FEET UNDER YOUR CHOICE, is commonly used to refer to following social distancing guidelines in order to avoid death from the global pandemic and conveys a social warning and demand for action. Attached Internet evidence also shows that this wording is commonly used in connection wit the applicant's goods and related goods to express this message. For example, Etsy.com and TeePublic.om feature clothing with the wording "SIX FEET AWAY OR SIX FEET UNDER" displayed in an ornamental manner. Because consumers are accustomed to seeing this term or expression commonly used in everyday speech by many different sources, they would not perceive it as a mark identifying the source of applicant's goods but rather as only conveying an informational message.

An applicant may not overcome this refusal by amending the application to seek registration on the

Supplemental Register or asserting a claim of acquired distinctiveness under Section 2(f). TMEP §1202.04(d); see In re Eagle Crest, Inc., 96 USPQ2d at 1229. Nor will submitting a substitute specimen overcome this refusal. See TMEP §1202.04(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Advisory Regarding Ornamental Use

Applicant is advised that, upon consideration of an allegation of use, registration may be refused on the ground that the applied-for mark as used on the specimen of record is merely a decorative or ornamental feature of the goods and, thus, does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; see In re David Crystal, Inc., 296 F.2d 771, 773, 132 USPQ 1, 2 (C.C.P.A. 1961); In re Villeroy & Boch S.A.R.L., 5 USPQ2d 1451, 1454-55 (TTAB 1987); TMEP §§904.07(b), 1202.03 et seq.

The following factors are considered when determining whether the public would perceive the applied-for mark as a trademark or merely as a decorative or ornamental feature: the commercial impression made by the mark on the specimen, any prior registrations of the same mark for other goods and/or services, promotion of the applied-for mark as a trademark, and the practices of the relevant trade. *See In re The Todd Co.*, 290 F.2d 597, 599-600, 129 USPQ 408, 409-10 (C.C.P.A. 1961); *In re Dimitri's Inc.*, 9 USPQ2d 1666, 1668 (TTAB 1988); *In re Paramount Pictures Corp.*, 213 USPQ 1111, 1115 (TTAB 1982); *In re Jockey Int'l, Inc.*, 192 USPQ 579, 581-83 (TTAB 1976); TMEP §§1202.03 *et seq.* For more information, see the Ornamental Refusal webpage.

With respect to clothing, consumers may recognize small designs or discrete wording as trademarks, rather than as merely ornamental features, when located, for example, on the pocket or breast area of a shirt. See TMEP §1202.03(a). Consumers may not, however, perceive larger designs or slogans as trademarks when such matter is prominently displayed across the front of a t-shirt or hat. See In re Pro-Line Corp., 28 USPQ2d at 1142 (holding BLACKER THE COLLEGE SWEETER THE KNOWLEDGE centered in large letters across most of the upper half of a shirt, to be a primarily ornamental slogan that was not likely to be perceived as a source indicator); In re Dimitri's Inc., 9 USPQ2d at 1667-68 (holding SUMO used in connection with stylized depictions of sumo wrestlers and displayed in large lettering across the top-center portion of t-shirts and caps, to be an ornamental feature of the goods that did not function as a trademark); TMEP §1202.03(a), (b), (f)(i), (f)(ii). Examples of acceptable specimens that show non-ornamental use on clothing include hang tags and labels used inside a garment.

IDENTIFICATION OF GOODS

The identification of goods is unacceptable and must be clarified because:

- 1. The wording "face masks" and "facial coverings" is indefinite and overbroad as it could include goods in multiple classes. For example, "face masks" could include sanitary face masks for protection against viral infection in Class 10 and knit face masks being headwear in Class 25. The applicant must indicate the nature of the goods and classify them accordingly.
- 2. The wording "including" in the identification of goods is indefinite and must be deleted and replaced with a definite term, such as "namely," "consisting of," "particularly," or "in particular."

See 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03(a). The identification must be specific and all-inclusive. This wording is an open-ended term (e.g., "including," "such as") that is not acceptable because it fails to identify specific goods. See TMEP §1402.03(a).

See 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant may substitute the following wording, if accurate: (with added wording **bolded**)

Class 10: Face masks, namely, sanitary face masks for protection against viral infection; Facial coverings being sanitary masks for protection against viral infection

Class 25: Apparel, namely, shirts, hats, facial coverings being niqabs, and knit face masks being headwear

Applicant's goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §\$1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods will further limit scope, and once goods are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual. See* TMEP §1402.04.

MULTIPLE-CLASS APPLICATION REQUIREMENTS

The application identifies goods and/or services in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on Trademark Act Section 1(b):

- (1) List the goods and/or services by their international class number in consecutive numerical order, starting with the lowest numbered class.
- (2) Submit a filing fee for each international class not covered by the fee(s) already paid (view the USPTO's current fee schedule). The application identifies goods and/or services that are classified in at least 2 classes; however, applicant submitted a fee(s) sufficient for only 1 class(es). Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.

See 37 C.F.R. §2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(b) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, see the Multiple-class Application webpage.

If the applicant has any questions or requires assistance in responding to this Office Action, please contact the assigned examining attorney.

How to respond. Click to file a response to this nonfinal Office action.

/Stephanie Rydland/ Stephanie Rydland Trademark Examining Attorney Law Office 130 (571) 272-7226 stephanie.rydland@uspto.gov

RESPONSE GUIDANCE

- Missing the response deadline to this letter will cause the application to <u>abandon</u>. The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or <u>unforeseen circumstances</u> could affect an applicant's ability to timely respond.
- Responses signed by an unauthorized party are not accepted and can cause the application to abandon. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find** <u>contact information for the supervisor</u> of the office or unit listed in the signature block.

Print: Fri Aug 28 2020 88834664

(4) STANDARD CHARACTER MARK

Six Feet Away or Six Feet Under

Mark Punctuated

SIX FEET AWAY OR SIX FEET UNDER

Translation

Goods/Services

• IC 025. US 022 039.G & S: Tops as clothing

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

88834664

Filing Date

20200314

Current Filing Basis

1B

Original Filing Basis

1 R

Publication for Opposition Date

Registration Number

Date Registered

Owner

(APPLICANT) Mejia, Leonardo A INDIVIDUAL UNITED STATES 374 Pondview Drive Harleysville PENNSYLVANIA 19438 (APPLICANT) Mejia, Lucas L INDIVIDUAL UNITED STATES 374 Pondview Drive Harleysville PENNSYLVANIA 19438 (APPLICANT) Mejia, Abigail I INDIVIDUAL UNITED STATES 374 Pondview Drive Harleysville PENNSYLVANIA 19438 (APPLICANT) Mejia, Finina H INDIVIDUAL PHILIPPINES 374 Pondview Drive Harleysville PENNSYLVANIA 19438

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Print: Fri Aug 28 2020 88858890

(4) STANDARD CHARACTER MARK

6 Feet Apart Beats 6 Feet Under

Mark Punctuated

6 FEET APART BEATS 6 FEET UNDER

Translation

Goods/Services

• IC 025. US 022 039.G & S: Baseball caps and hats; Short-sleeved or long-sleeved t-shirts

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

88858890

Filing Date

20200403

Current Filing Basis

1B

Original Filing Basis

1R

Publication for Opposition Date

Registration Number

Date Registered

Owner

(APPLICANT) Crosby, Joel S. INDIVIDUAL UNITED STATES 854 Miramonte Drive Santa Barbara CALIFORNIA 93109

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Print: Fri Aug 28 2020 88853518

(4) STANDARD CHARACTER MARK

6 feet apart or 6 feet under

Mark Punctuated

6 FEET APART OR 6 FEET UNDER

Translation

Goods/Services

• IC 035. US 100 101 102.G & S: clothing

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

88853518

Filing Date

20200331

Current Filing Basis

1B

Original Filing Basis

1R

Publication for Opposition Date

Registration Number

Date Registered

Owner

(APPLICANT) Raymond E. Roberts INDIVIDUAL UNITED STATES 3350 Shelby Street, Suite 200 Ontario CALIFORNIA 917645556

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Raymond E. Roberts

Print: Fri Aug 28 2020 88851695

(4) STANDARD CHARACTER MARK

six feet apart

Mark Punctuated

SIX FEET APART

Translation

Goods/Services

• IC 025. US 022 039.G & S: Wearable garments and clothing, namely, shirts

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

88851695

Filing Date

20200329

Current Filing Basis

1B

Original Filing Basis

1 R

Publication for Opposition Date

Registration Number

Date Registered

Owner

(APPLICANT) Pietruszka Zbigniew INDIVIDUAL UNITED STATES 1766 Broadway New Hyde Park NEW YORK 11040

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

TRADEMARK

Register

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Live Dead Indicator

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IMAGE 1 OF 47

College age spring break students party on the beach, Tuesday, March 17, 2020, in Pompano Beach, Fla. As a response to the coronavirus pandemic, Florida Gov. Ron DeSantis ordered all bars be shut down for 30 ... more

Not everyone was quick to adapt to social distancing last month.

Amid a pandemic in which people could be facing a choice between staying 6 feet apart or going 6 feet under, many across the nation and around the world — at beaches, at churches, in parks, at markets — didn't immediately take to the precaution of keeping what could be life-saving social distance.

Crowds have thinned in public spaces as the coronavirus has spread around the world, but it remains to be seen how diligently social distancing will be respected in the weeks to come and how effective it will be.

*Click for details

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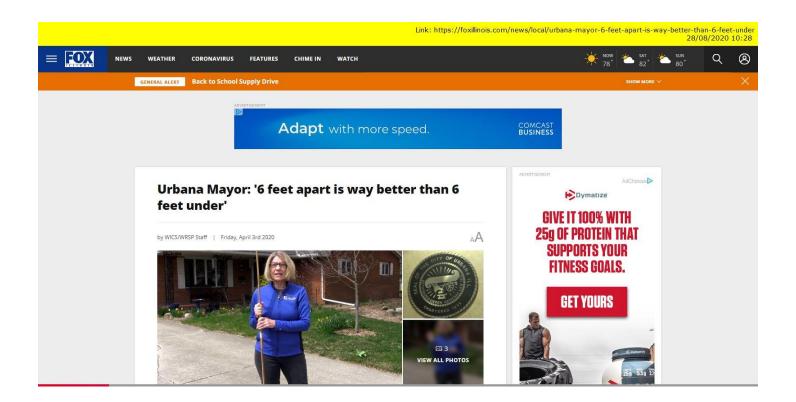


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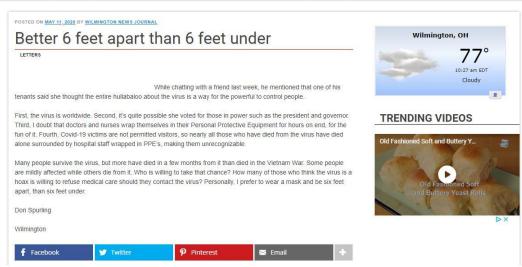












you catches this damned virus."

Zeke pointed out that Carlos had touched his face and handed him a wipe. Carlos cursed. Rosa had her back to the group. "Rosa, what are you looking at?"

"At my Catalinas." The bright-red slurry lacerating the mountain looked like flesh burns tormenting a living thing. "Thousands of saguaros gone. Maldito buffelgrass! Entire canyons up in smoke. I think Mother Nature was joining the protests. Dios bendiga a los bomberos."

Carlos translated for Zeke. "God bless the firefighters."

Molina hung his homemade sign over the door. "No Mask, No Service. 6 feet apart or 6 feet under."

As Rosa disinfected the counter she told Elena, "Ducey broke our 'Stupid Motorist Law.' He drove this state into the middle of an arroyo flooded with coronavirus. And now we're up to our masks in it!"





Posted by Claudette McDermott
a resident of another community
on Apr 27, 2020 at 5:49 pm
I love that people are so generous with their time and talent to help out where they can. I'm doing
the same thing.

It feels good to help out, by taking action. Something that is community related, helping neighbors
and strangers alike is important. It's giving us something positive that we can do for one another. If
you are fearful and feel lost, make masks and give them away, you'd be surprised how good it feels,
giving you purpose and making you feel productive in the challenging times we are in. No sewing
machine? Sew by hand. After all we have time on our hands:)

Masks do make a difference, it's common sense. Something is better than nothing to protect you
and others from what could be a horrible situation that all too many people are dealing with as we
speak. If we hadn't taken this step, we would surely be in a more desperate place.

Please wear a mask when away from your home and distance yourself when you are out. 6 feet
apart or 6 feet under, your choice ~

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Closerlook team: Dan Morrill, Amy Wolgemuth Bordoni, Teresa Fabila, Jackie Frole, Cecilia Nonis, Lauren Keeling, Rhiannon Damm



Frederick Rescott

6 Feet Apart or 6 Feet Under. Choose wisely.



Schedule

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'6 feet apart or 6 feet under': singing the 'C-19 Blues'



South County Reporter

If you followed Boston's punk rock scene in the 1980s and early 90s, you might recognize the voice of Bob L'Heureux, lead singer of the Busted Statues. Today, Bob lives in Cranston and sings country. And like everyone, he's thinking about the coronavirus—so much so he's written a song about it that's likely to get your foot tapping.





Bob L'Heureux The All Mighty Cowboys Busted Statues coronavirus

COVID-19





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LATEST ISSUE PAST ISSUES TOP 50 CEO AWARDS ABOUT ENEWSLETTER

ADVERTISE

Six feet apart or six feet under

SIX FEET UNDER. YOUR CHOICE!

6 feet apart or 6 feet under: N.L. hotel owner takes COVID-19 awareness into his own hands

April 6, 2020 // 3 Comments

The COVID-19 pandemic has inspired a frustrated St. John's hotel owner to launch his own physical distancing awareness campaign. "Six feet apart or six feet under. Your choice!" say the block-lettered signs that Marcel Etheridge, owner of the Captain's

Quarters hotel, had his staff put ...

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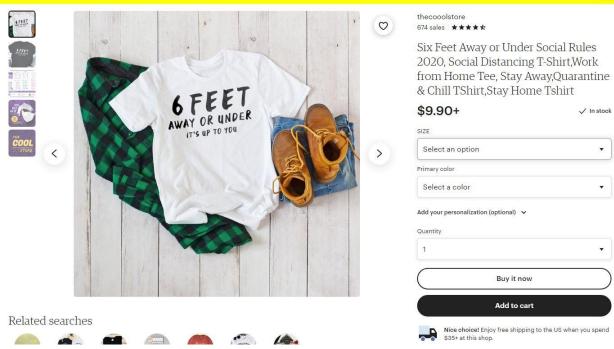
Six Feet away or under, Social Distancing T-Shirt, Keep Away 2020, Working from Home Tee, Stay Away,Quarantine & Chill TShirt,Stay Home Tshirt

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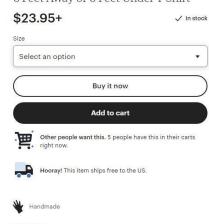
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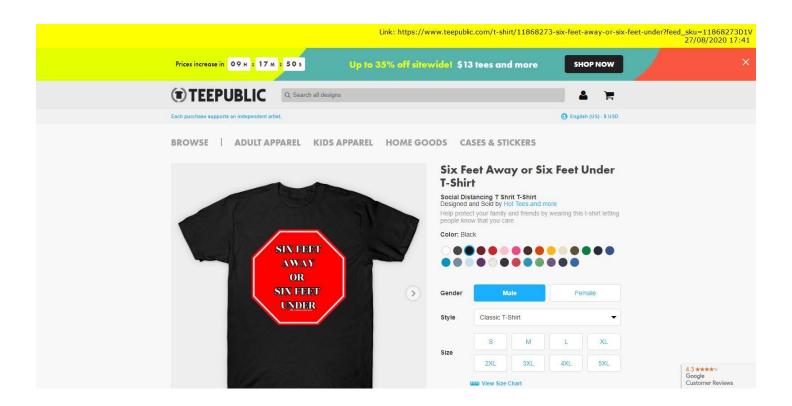
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6 Feet Away or 6 Feet Under T-Shirt





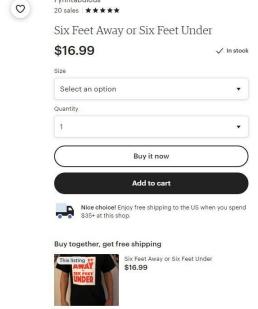


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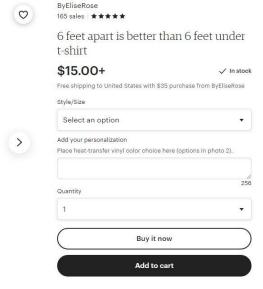
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Home > All Products > 6 Feet Apart OR 6 Feet Under Tee





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★★★★★12 Reviews

New normal clearly shows in this shirt.

PRODUCT: 6 FEET APART AMERICAN APPAREL TEE

6 FEET APART AMERICAN APPAREL TEE

COLOR: BLACK

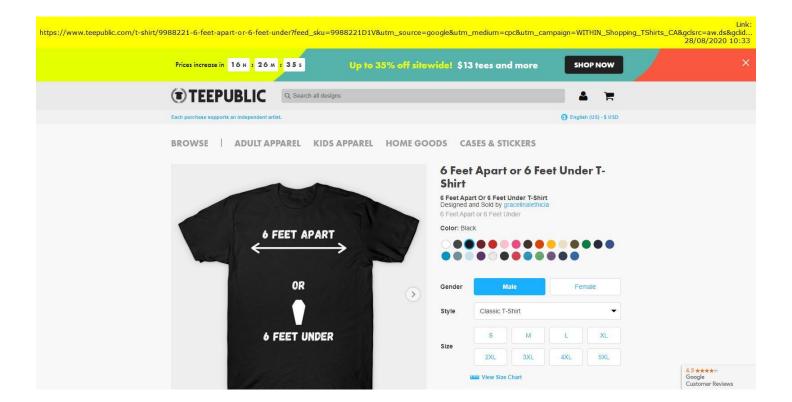


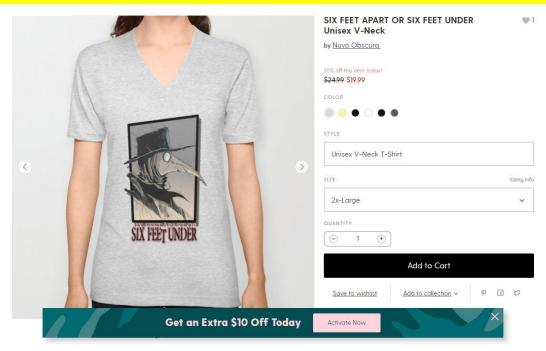




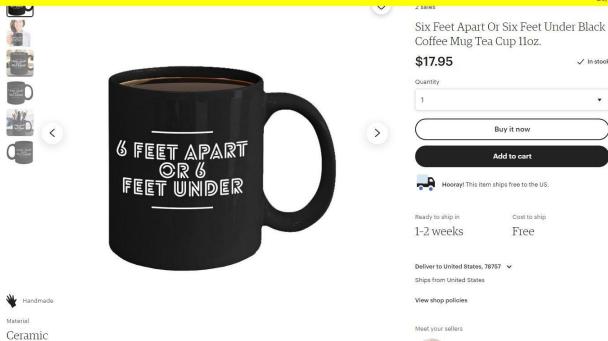








✓ In stock



United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued on August 28, 2020 for U.S. Trademark Application Serial No. 88869174

Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter that you must respond to by the specified deadline or your application will be <u>abandoned</u>. Please follow the steps below.

- (1) Read the official letter.
- (2) **Direct questions** about the contents of the Office action to the assigned attorney below.

Stephanie Rydland Examining Attorney LAW OFFICE 130 (571) 272-7226 Stephanie.Rydland@USPTO.GOV

Direct questions about navigating USPTO electronic forms, the USPTO <u>website</u>, the application process, the status of your application, and/or whether there are outstanding deadlines or documents related to your file to the <u>Trademark Assistance Center (TAC)</u>.

(3) **Respond within 6 months** (or earlier, if required in the Office action) from August 28, 2020, using the Trademark Electronic Application System (TEAS). The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. See the Office action for more information about how to respond.

GENERAL GUIDANCE

- <u>Check the status</u> of your application periodically in the <u>Trademark Status & Document Retrieval (TSDR) database</u> to avoid missing critical deadlines.
- <u>Update your correspondence email address</u>, if needed, to ensure you receive important USPTO notices about your application.
- Beware of misleading notices sent by private companies about your application.

Private companies **not** associated with the USPTO often use public information provided in USPTO trademark applications to mail and email trademark-related offers and notices - most of which require fees. These companies often have names similar to the USPTO. All **official USPTO correspondence** will only be **emailed from the domain** "@uspto.gov".